



September 12, 2019

**RE: House Committee on Oversight Hearing: Protection of Youth From Nicotine Product Addiction Emergency Rules**

Chair Hall and members of the House Committee on Oversight,

I am writing on behalf of our more than 13,000 members in Michigan to express CASAA's concerns and extreme opposition to Governor Whitmer's proposed prohibition on the sale and, in some cases, the possession of vapor and alternative nicotine products. We are also deeply troubled by the governor's use of emergency powers to implement this ban. This rule is a hasty reaction to an emotionally fueled issue that is only being made worse by well-meaning, but misguided coercive attempts to prevent youth use of tobacco and nicotine products.

We note that Michigan consistently spends less than 3% of the amount of tobacco master settlement payments and tobacco tax revenue recommended by the Centers for Disease Control on tobacco prevention and control.<sup>1</sup> Arguably, **the state hasn't given existing tobacco prevention strategies a chance to succeed**. We assert here that if the State of Michigan believes traditional tobacco control strategies are effective, then compliance enforcement and smoking cessation and prevention programs should be fully funded.

It is remarkable that within days of Michigan becoming the 49th state to conform its minimum legal sales age to the federal statute (18+), the governor is declaring an emergency regarding youth use of nicotine products. As Representative Hall and others in the legislature note in recent statements, Michigan is not giving common sense regulation an opportunity to work. While tobacco and nicotine businesses might make convenient targets for stricter regulation, it is clear that the state has not done enough to avert what Governor Whitmer is suddenly declaring as an emergency.

The governor's proposal to ban the sale of vapor and alternative nicotine products sold in flavors other than tobacco will deny thousands of Michigan residents who smoke access to the most popular low-risk smoking replacement product on the market today. Focusing solely on a particular feature of vapor and alternative nicotine products ignores other aspects of these products that people find enjoyable. Pleasure and personal choice are key factors in helping people who smoke voluntarily switch to safer products and dramatically improve their health.

Moreover, it is a mistake to focus on the issue of flavors to the exclusion of underlying factors affecting youth use. Socioeconomic status, trauma, peer pressure, stress, depression, and a

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<sup>1</sup> Campaign for Tobacco Free Kids, "Broken Promises to Our Children," Michigan State Report Page. Accessed from <https://www.tobaccofreekids.org/what-we-do/us/statereport/michigan> on 09/11/2019.

natural inclination toward taking risks all motivate young people to experiment with potentially harmful coping strategies. While this new rule might make it more difficult for young people to access nicotine and tobacco products, it will do nothing to address the motivating factors that lead a young person to seek out potentially risky or self-destructive coping behaviors.

The leading indicator of whether or not a young person will smoke is if they live with a parent who smokes. **Michigan can do more to promote healthy behaviors among young people by encouraging parents who smoke to switch completely to a low-risk, smoke-free alternative.** In order to achieve a rapid and enduring transition to safer nicotine products, people who smoke will need to have legal access to the products they enjoy, which necessitates the availability of a diverse range of flavored smoke-free products. **A ban on flavored nicotine products will not protect Michigan's children, but it will almost certainly put their parents at greater risk.** For these and the following reasons CASAA is urging the legislature to challenge Governor Whitmer's inappropriate use of emergency powers in this matter.

### **Banning flavored smoke-free alternatives to combustible tobacco will deny people who smoke vital tools for helping them quit smoking**

- **Vaping is mostly responsible for an accelerated decline in smoking between 2014 to 2017<sup>2</sup>**

According to a report published by the Progressive Policy Institute, the availability of vapor products can be credited with 60% to 80% of the accelerated decline in smoking.

- **A ban on flavored vapor products will force Michigan vape shops to close**

We defer to data being presented by trade representatives from the vapor industry with regard to the percentage of sales of devices, e-liquid, and accessories, but it is our understanding that e-liquid in flavors other than tobacco make up a majority of consumer purchases. To date, we are unaware of any retailer or manufacturer that sells a popular line of unflavored e-liquid.

It is unlikely that specialty vapor retailers will be able to remain open if they are restricted to selling just vapor devices and tobacco flavored e-liquid. It is the diversity of vapor products that both supports independent businesses and provides a customizable experience to people who are attempting to transition to a smoke-free lifestyle.

- **Vapor product specialty shops (vape shops) play a vital role in helping smokers switch to a low-risk alternative**

Vape shops are a source of peer-to-peer support that is not effectively replicated by current tobacco control strategies. Vape shops provide knowledgeable staff who offer individualized attention to help customers find a device and e-liquid flavor that will help them successfully make

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<sup>2</sup> PPI, "The Impact of Electronic Cigarettes on Cigarette Smoking By Americans and Its Health and Economic Implications." July 2019. Accessed from <https://www.progressivepolicy.org/issues/the-impact-of-electronic-cigarettes-on-cigarette-smoking-by-americans-and-its-health-and-economic-implications/> on 09.11.19.

the switch. Just as importantly, vape shops provide a space for peer-to-peer support for people who used to smoke and people who are transitioning to a smoke-free product.

By way of background, vapor retailers and manufacturers in the United States are prohibited by federal law from marketing e-cigarettes as smoking cessation products or even less harmful than cigarettes.<sup>3</sup> Customers, however, are bound by no such law. It is not uncommon to hear customers exchange successful quit smoking stories between one another in a vape shop. To the casual observer, sharing such a story might not seem like much, but between people who are recovering from a multiyear or multi-decade cigarette addiction, it can mean the difference between living a smoke-free life or returning to the devil they know.

By comparison, vapor retailers in the United Kingdom are not subject to the same limitations on marketing communication in face-to-face transactions. Research conducted in the UK demonstrates that people who shop for vapor products in specialty vapor shops have a remarkable quit rate of >40% after 12 months.<sup>4</sup> Other than quitting “cold turkey,” no other smoking cessation intervention comes close to the success rate found in the UK. And while the retail environment studied in the UK is not a 1:1 match with vapor shops in the United States, when we consider customer to customer interactions within the retail environment, which are not regulated by federal law, it stands to reason that the results found in the UK may be generalizable to consumers in the United States.

## **Banning flavors will pressure consumers and retailers to take unnecessary risks**

- **Motivations to “do it yourself.”**

Motivations for people to manufacture vapor products at home for personal use (“do it yourself” or “DIY”) are related to saving money and customizing the experience. If flavors are banned, a significant number of individual consumers will turn to DIY in order to maintain access to vapor products they enjoy. Responses to consumer surveys regarding bans on various vapor products indicate as much. We note that the origins of the vapor industry trace back to people DIYing at home because they were unsatisfied with the products that were available at the time (circa 2008-2012).

In general, when following basic safety and sanitation protocols, DIYing at home is relatively safe. But in the hands of novices, DIYing can present some risks—especially if these at-home operations are scaled up to meet a new demand for what will be illegal products. If Governor

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<sup>3</sup> 21 USC 387k: Modified risk tobacco products, accessed from <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title21-section387k&num=0&edition=prelim>

<sup>4</sup> Polosa, Riccardo et al. “Quit and smoking reduction rates in vape shop consumers: a prospective 12-month survey” *International journal of environmental research and public health* vol. 12,4 3428-38. 24 Mar. 2015, doi:10.3390/ijerph120403428

Whitmer's rule is allowed to take effect, the State of Michigan would be creating a situation where people who vape (or people who smoke who might attempt to switch to vaping) will be pressured to attempt DIYing e-liquids at home, possibly without the patience, knowledge, and experience to take the basic necessary precautions to ensure safety.

Even more concerning, this law will create a new unregulated underground market where consumers have no assurances of product quality and no means of recourse should they be the victims of fraud or injury related to poorly manufactured products. While home-based manufacturing of small batches of e-liquid for personal use does not pose many risks, enterprising underground sellers will be scaling up to meet the demand created by Governor Whitmer's flavor ban. Such large-scale productions operating in the shadows offer no assurances that good manufacturing practices and product standards are being followed. Moreover, an underground market makes traceability near impossible and, as we've seen recently with illnesses linked to illegal oil-based cannabis products, delays life-saving treatment for people exposed to contaminants.

- **An underground marketplace for nicotine vapor products is a certainty**

Unlike traditional tobacco products like combustible cigarettes, nicotine vapor products do not require large agricultural and manufacturing operations in order to make product. We note that a significant portion of the vapor market--the open-system market--is rooted in consumers who were dissatisfied with mediocre, ineffective products purchased from overseas. Not content with muted flavors and low-power devices, consumers reverse engineered and modified existing designs in order to make products that are satisfying. This drive to innovate is part of the fabric of the vaping market.

## **Recommendations**

- We urge the state department of health to refocus their attention on the most pressing concern: Reducing the early death and disease attributed to smoking.
- Effective substance use prevention starts by empowering young people with strong social skills and healthy coping strategies. People are generally resourceful and, historically, find ways to circumvent prohibitions on tobacco, drugs, and alcohol. Strong life skills training during adolescence has a greater potential to positively shape a young person's life well into adulthood.
- Michigan consistently spends only a small fraction of the amount recommended by the Centers for Disease Control on tobacco prevention. Arguably, the state hasn't given existing tobacco prevention strategies a chance to succeed. We assert here that if the State of Michigan believes that traditional tobacco control strategies are effective, then compliance and enforcement should be fully funded.

For the foregoing reasons we respectfully urge the Michigan Legislature to intervene in Governor Whitmer's emergency order to ban legal access to flavored smoke-free alternatives to combustible tobacco. The unintended consequences outweigh hypothetical gains.

The Consumer Advocates for Smoke-free Alternatives Association

Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Clark', written in a cursive style.

Alex Clark

CEO

The Consumer Advocates for Smoke-free Alternatives Association

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*The Consumer Advocates for Smoke-free Alternatives Association (CASAA) is a 501(c)(4) grassroots consumer organization dedicated to promoting harm reduction as a necessary strategy to reduce the early death and disease attributed to smoking. We work to provide truthful information to consumers and protect access to safer alternatives to combustible tobacco.*